

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CAROLYN BERGSTROM

Claimant

VS.

SPEARS MANUFACTURING COMPANY

Respondent

AND

ZURICH U.S. INSURANCE COMPANY

Insurance Carrier

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Docket No. 1,009,142

ORDER

Respondent appeals the September 7, 2006 Award of Administrative Law Judge Thomas Klein. The Administrative Law Judge (ALJ) found claimant to be permanently and totally disabled as a result of the injuries suffered on September 23, 2002. The Appeals Board (Board) heard oral argument on December 5, 2006.

APPEARANCES

Claimant appeared by her attorney, William L. Phalen of Pittsburg, Kansas. Respondent and its insurance carrier appeared by their attorney, Larry D. Shoaf of Wichita, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the ALJ. In addition, the Board considered the deposition of T. A. Moeller, Ph.D. However, it was noted that the deposition of Dr. Moeller was not listed in the Award of the ALJ. Also, there is no mention of Dr. Moeller's deposition or testimony in the body of the ALJ's Award.

ISSUE

What is the nature and extent of claimant's injuries and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At oral argument, the parties discussed the fact that the deposition of Dr. Moeller was not listed in the Award as part of the record and that Dr. Moeller's testimony was not mentioned by the ALJ in the Award. Despite the fact that claimant is asking for the ALJ's Award to be affirmed and that the Board will consider the entire record as part of its de novo review, the attorney for the claimant requested that the matter be remanded to the ALJ for consideration of the entire record. The attorney for the respondent, while not supporting the request for a remand, agreed that the deposition of Dr. Moeller was significant, if not pivotal, to this dispute. After careful consideration, the Board, giving deference to the concerns expressed by the attorney for the claimant, finds the Award of the ALJ should be set aside and the matter remanded to the ALJ for consideration of the entire record.

The Board does not retain jurisdiction of this matter. If the parties wish to appeal any further actions or decisions by the ALJ, an appropriate appeal must be timely filed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Thomas Klein dated September 7, 2006, should be, and is hereby, set aside and the matter remanded to the ALJ for a determination of the issues, based upon the entire record.

IT IS SO ORDERED.

Dated this ____ day of December, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Larry D. Shoaf, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge